

# RABUSE LAW FIRM

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February 16, 2012

*Via U.S. Mail*

Jeff S. Jordan  
Supervisor Attorney  
Office of General Counsel  
Complaints Examination and Legal Administration  
Federal Elections Commission  
995 E Street NW  
Washington D.C. 20403

**RE: Pre-MUR 528**

Dear Mr. Jordan:

I represent Jean Cottington, the former treasurer of ACPAC ACA International. Ms. Cottington has designated me to represent her concerning the matters raised by the Federal Elections Commission in its January 2012 letter to Ms. Cottington "c/o ACPAC ACA International."

In my letter of January 24, 2012 (copy enclosed) I provided a preliminary response on Ms. Cottington's behalf and promised a more comprehensive reply once we had reached agreement with counsel for ACA regarding the effect a Confidentiality Order in place in the lawsuit pending between Ms. Cottington and ACA might have in this proceeding with the FEC. Since then, and as reflected in my letter of February 7, 2012, counsel for the ACA has agreed that Ms. Cottington and the ACA may share with the Commission materials that have been designated as "confidential" in that lawsuit. With those developments as backdrop, I now address the matters raised in the Commission's letter. That letter was sent in apparent reaction to the December 2011 letter sent to Alexandra Broomhead by the current ACPAC Treasurer, Adam J. Peterman.

Jean Cottington was asked to serve as the ACPAC treasurer in 2008. Before that time, she had acted as Director of Legislative and Grassroots for ACA, where her duties had included fundraising for ACPAC. Ms. Cottington was terminated from her employment with ACA, including her position as ACPAC treasurer, in April of 2011 by ACA's then-interim CEO, Ted Smith.

Following her termination, Ms. Cottington sued ACA and Smith in state district court in Minnesota. Her lawsuit makes several claims, including a violation of Minnesota's "Whistleblower Act" by the Association.

RELIABLE ■ RESPONSIVE ■ RESULTS

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As more fully set forth in the pleadings in the lawsuit, in April of this year Ms. Cottingham learned of serious misconduct within the ACA concerning the mishandling of accounts and the falsification of reports to the FEC. As we have subsequently confirmed in the course of discovery in the lawsuit, the former ACA Vice President of Finance, Mike Henke, lead an effort to falsify contribution records and then falsify reports to the Federal Elections Commission. The ACA had also named Mr. Henke as deputy treasurer of the PAC. Henke and the ACA accounting staff were tasked with the actual processing of contributions, and the preparation of FEC reports for Ms. Cottingham's review.

In the fall of 2010 ACA Vice President Henke transferred \$23,419 from the ACA general fund into the ACPAC account. Having done so, he then needed to create a "paper trail" of fictitious contributions so that when Ms. Cottingham or anyone else reviewed draft reports the account balance would seem to tie out exactly to real contributions from real ACPAC contributors. In furtherance of the fraud, Henke co-opted Ms. Cottingham's administrative aid, Michelle Andrew, and another ACA staffer, Katelyn Pearsall, to assist him. Pearsall and Andrew helped Henke invent contributions from actual past ACPAC contributors to support the \$23,419 amount he has transferred from the Association's general accounts to ACPAC. Henke threatened Andrew and Pearsall with firing if they refused to help or revealed the fraud to Cottingham.

During this same period of time, late 2010, there was another development within the ACA impacting ACPAC but concealed from Ms. Cottingham. Specifically, in the late summer of 2010 Ms. Cottingham and her assistant, Michelle Andrew, discovered that a staffer assigned the ACA to assist with processing contributions to ACPAC, Marilyn Cerini, had failed to record and process contributions properly. Ms. Cottingham and Ms. Andrew thereafter lead efforts to highlight the issue to ACA management and took prompt corrective action. Cerini was terminated by the ACA in October 2010.

After Cerini was fired, however, the ACA learned of a more serious problem: Cerini had been converting PAC funds to personal use. The particulars of her thefts are detailed in Adam Peterman's December 1, 2011 letter to Alexandra Broomhead. During a November 2010 meeting convened by Smith, Henke, and ACA General Counsel Valerie Hayes, the Cerini theft problem was revealed to a select group of individuals, including staffers Andrew and Pearsall. Cottingham was not invited to attend, even after Andrew protested that Cottingham needed to be in the meeting. During the meeting, the attendees were warned not to disclose what had been revealed to anyone not in attendance, including ACPAC treasurer Cottingham.

As recent ACA correspondence to the Commission has also explained, in early 2011 ACA Vice President Henke reversed the transfer of the \$23,419. He put the money back into the ACA general fund. This required the filing of corrected reports with the FEC. In addition to explaining the \$23,419, however, there were other funds in the ACPAC account that could not be tied to actual contributors. Henke therefore directed Andrew to make an additional falsification, lending her name to a \$250 contribution that she had not made. "Corrected" FEC reports were filed in February of 2011. After preparing the falsified reports, however, Henke did not present

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them to Cottington to review. Instead, he used his authority as ACPAC Assistant Treasurer to file them electronically himself.

In early April 2011, Michelle Andrew, Cottington's assistant, could no longer remain silent about what she knew and the frauds in which she had been ordered to participate. Although she was afraid of being terminated, in a private meeting with Jean Cottington Andrew revealed what she knew about the thefts and the falsification of FEC filings. Not knowing who in ACA management she could trust at that point, Cottington reported what she had learned from Andrew to members of the association's executive committee, including ACA member President Martin Sher and ACA member Vice President Tom Stockton.

After Cottington notified Sher and Stockton, the Executive Committee in turn contacted interim CEO Smith and demanded answers. Smith and ACA Human Resources Manager Kathy Molitor hurriedly arranged interviews with several ACA employees, including Andrew, Henke and Molitor. In these interviews Andrew confessed to her unwilling participation in the FEC fraud and concealment of the Cerini thefts as well as her recent disclosures to Cottington. Henke confessed to a substantial portion of the wrongdoing. Cottington explained what she had uncovered and brought brought to the attention of Sher and Stockton.

Smith fired Henke immediately. The next morning he fired Cottington, ostensibly for failing to prevent the misconduct. The idea that Cottington could be justly terminated for failing to prevent problems at ACPAC is risible. Cottington had been extremely proactive in addressing all ACPAC problems capable of coming to her attention. Henke and Andrew have testified that the fraud concerning the phony contributions was carefully perpetrated so that it would be undetectable. They used the names of real known contributors whose falsified contributions tied out to account balances.

The corrected submittals are in fact accurate (since Henke had reversed the \$23,419 back into the ACA general fund), except for modest dollar amounts which had falsely attributed to Michelle Andrew. Cottington had no ability to "prevent" this fraud because Henke, having created the fraudulent reports, proceeded to file them without Cottington ever having seen them.

A more detailed recounting of these events appears in the pleadings filed in the lawsuit. We respectfully direct the Commission's attention to those materials, including the supporting affidavits and their attachments.

Based on this record, Ms. Cottington takes strong exception to a number of the statements and characterizations in ACPAC Treasurer Adam J. Peterman's December 1, 2011 letter to Alexandra Broomhead.

To begin, the entire section of the letter devoted to "Misappropriations From ACPAC by Marilyn Cerini, Former Assistant Controller," makes no mention of the fact that after Cerini's thefts were uncovered, there was a deliberate decision to conceal that important information from Cottington.

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More troubling, however, are several false or misleading characterizations in the December 1 ACA letter regarding what Ms. Cottingham did or did not do. These include:

- On page 4, the Peterman letter says that "On December 2, 2010 then-Treasurer Jean Cottingham, filed the original Post-General Election Report, which included the falsified itemized contribution records totaling \$22,649." The footnotes associated with this statement remarkably describe the falsified information included in this report to have been created by "two employees" by their "then-supervisor."

The "two employees" were Michelle Andrew and Katelyn Pearsall. Cottingham was their "supervisor" for ACPAC purposes. But the then-supervisor who enlisted them in the fraud was ACA VP Mike Henke. Any implication that Cottingham was somehow responsible for those acts is patently untrue.

- The Peterman letter at page 4, footnote 7 asserts that "Then-ACPAC Treasurer Jean Cottingham filed an amended 2010 Post-General report on February 7, 2011."

As ACA well-knows, the February 7, 2011 report was created and filed with the FEC by Vice President Mike Henke. It was never even provided to Cottingham to review, much less filed by her. Her name was used by Henke in making the filing.

Accordingly, we respectfully submit that Ms. Cottingham is not realistically or legally responsible for the improper acts and omissions of ACA executives about which she in fact "blew the whistle."

With this letter we are enclosing copies of Ms. Cottingham's complaint in the lawsuit, her recently filed Motion for Summary Judgment and the two affidavits of Erin E. Neils filed in support of that motion. These materials were filed with the court "under seal" and designated "confidential" within the litigation, and the parties request that the commission treat them as such.

We will be pleased to provide whatever additional information the Commission may require.

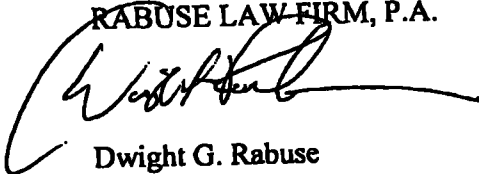
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Sincerely,

RABUSE LAW FIRM, P.A.



Dwight G. Rabuse  
Attorney at Law

DGR/jmm

cc: Jean Cottington  
Alissa Raddatz

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